



August 13, 2001

Ms. Rhonda Barfield
Henslee, Fowler, Hepworth & Schwartz
6688 N. Central Expressway, Suite 850
Dallas, Texas 75206

OR2001-3520

Dear Ms. Barfield:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150635.

The Roxton Independent School District ("RISD") received a request for three categories of information concerning student class rankings and grade point averages ("GPAs").¹ You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address a procedural matter. You did not submit any copies of the information at issue for our review. *See* Gov't Code § 552.301(e)(1)(D). This office has previously held that an educational agency or institution seeking a ruling from this office with regard to student records claimed to contain confidential information under the Family Educational Rights and Privacy Act of 1974 ("FERPA") must either obtain parental consent for the disclosure of personally identifying, nondirectory information before submitting the information to this office, or edit the records to make sure that they contain no such information. *See* Open Records Decision No. 634 (1995). However, subsequent correspondence from the United States Department of Education has advised that educational agencies and institutions may submit personally identifiable information subject to FERPA to this office for purposes of obtaining rulings as to whether information

¹The requestor seeks the 1) class ranking and GPAs of the top two students at the end of the eleventh grade school year, 2) class ranking and GPAs of the top two students at the end of the first semester of the twelfth grade year, and 3) class ranking and GPAs of the top two students at the end of the fourth cycle of the twelfth grade year.

must be withheld under FERPA or under state law.² Accordingly, in future requests for Public Information Act rulings from this office, in accordance with section 552.301(e)(1)(D), RISD must submit the information at issue to this office in an unredacted form. Parental consent need not be obtained for this submission.

We next address your confusion about what information the requestor seeks. You inform us that RISD is confused as to whether the requestor seeks 1) the names and GPAs of the students who finished first and second in their class at specific times, or 2) the names and GPAs of those students who were ranked first and second in the class at the same specified times, regardless of final ranking. Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. *See also* Open Records Decision No. 663 (1999). When a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available that might be responsive to the request so that the requestor may narrow or clarify the request. *See id.* at 4. Accordingly, RISD should seek clarification from the requestor, rather than from this office. Absent such clarification from the requestor, we shall proceed based on the language of the request.

You inform us that the requestor is an attorney for the parent of an RISD student. You contend that, in this case, FERPA allows access only to information about the student whose parents are requesting the information through their attorney, and not the information about any other student. The requestor's access to the requested information depends upon several unanswered questions: is the requestor seeking student-identifying information? Is the information directory information? Does the requestor have special access rights to the information? Have the parents of a student whose records are at issue given their consent for release of those records?

FERPA grants the parents of a student at an educational agency or institution a right of access to their child's education records. However, when the information does not concern the parent's child, FERPA does not allow access to personally identifiable information about a student. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases *personally identifiable information* (other than directory information) contained in a *student's education records* to anyone but certain enumerated federal, state, and local officials and institutions, *unless otherwise authorized by the student's parent*. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

²*See* letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education to David Anderson, Chief Counsel, Texas Education Agency (April 29, 1998) (on file with Open Records Division, Office of the Attorney General).

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 332 (1982), 206 (1978). As the requestor seeks the class rank and GPA and not the names of students, it does not appear from the language of the request that the requestor is seeking identifying information of any student. If, upon clarification, RISD learns that the requestor is not seeking any student-identifying information, then the information responsive to the request is not confidential under FERPA. If the requestor is seeking the names of the students associated with the information, the information may nevertheless be subject to disclosure as "directory information," as we explain below.

FERPA provides that "directory information" may be released to the public if the institution or agency complies with section 1232g(a)(5)(B) of title 20 of the United States Code. Examples of "directory information" include the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. 20 U.S.C. § 1232g(a)(5)(A). Section 1232g(a)(5)(B) provides as follows:

[a]ny educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

20 U.S.C. § 1232g(a)(5)(B). Accordingly, if an institution or agency has designated certain types of information as directory information, then it is required to disclose the information after complying with federal notice requirements for release of directory information. *Id.*; 34 C.F.R. § 99.37. You do not inform this office whether the information responsive to the request has been designated by RISD as directory information. If so, and if none of the parents whose child's information is at issue in the present request objected to release of the directory information within a reasonable period of time after RISD gave notice of that information, then the information is not confidential under FERPA.

Assuming that the responsive information is not directory information, you inform us that the parents of one of the students have not signed a release, and that the parents have specifically requested that their child's responsive information not be released. As noted above, if the release of this student's information would not identify the student to the requestor, then it is not confidential under FERPA. If the requestor is seeking the names of the students, the information that identifies a student that is not the child of the requestor's client must not be released to the requestor.

You also inform us that the class valedictorian's identity and GPA were disclosed at commencement ceremonies, but you do not advise whether the requestor or the requestor's clients were provided this information, nor can we ascertain from the limited information provided this office whether it is responsive to the present request.³ You further inform us that the requestor is an attorney for parents of a student in the class, but you do not inform us whether their child's information is responsive to the request. Parents of a student have an affirmative right of access to their child's education records. *See* 20 U.S.C. § 1232g(a)(1)(A), (d). Thus, even if the responsive information identifies students, it may not be withheld from the requestor to the extent it is information of the requestor's client's child. In addition, student-identifying education records may be released with parental consent.

In summary, we have provided general guidelines as explained above, but we are unable to resolve the request based upon the limited information provided this office and absent clarification from the requestor. If release of the information to the requestor would not violate FERPA, such information is not excepted from disclosure under section 552.101 on that basis, or under section 552.114, and it must be released. If you have further questions as to the applicability of FERPA to information that is the subject of a request under the Public Information Act, including the present request, you should consult with the United States Department of Education's Family Policy Compliance Office at the following address and telephone number:

Family Policy Compliance Office
United States Department of Education
600 Independence Avenue S.W.
Washington, D.C. 20202-4605
Tel: (202) 260-3887

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar

³ If this information was designated directory information under the above-referenced procedure and notice requirement, and its release was not objected to by the student's parents, or if RISD obtained permission from the student's parents to release the valedictorian's information at commencement, then the prior release was not in violation of FERPA.

days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

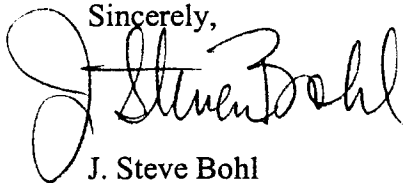
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steve Bohl". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J. Steve Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 150635

Enc: Submitted documents

c: Mr. J. Stephen Walker
The Moore Law Firm, L.L.P.
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Paris, Texas 75460-4222
(w/o enclosures)